

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

|                               |   |                   |
|-------------------------------|---|-------------------|
| KENNETH SHARP,                | : | NO. 1:10-CV-00831 |
|                               | : |                   |
| Petitioner,                   | : |                   |
|                               | : |                   |
| vs.                           | : | <b>ORDER</b>      |
|                               | : |                   |
| WARDEN, PICKAWAY CORRECTIONAL | : |                   |
| INSTITUTION,                  | : |                   |
|                               | : |                   |
| Respondent.                   | : |                   |

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 7), to which there were no objections.

Proper Notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. United States v. Walters, 638 F.2d 947 (6<sup>th</sup> Cir. 1981). As of the date of this Order, no objections have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation thorough, well-reasoned, and correct.

Accordingly, the Court hereby ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 7) in all respects, and DISMISSES with prejudice Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (doc. 1), on the

basis that Grounds One, Two, and Four are lacking in merit, and that Ground Three is waived and procedurally barred from review. The Court DECLINES to issue a certificate of appealability in this case as to Ground Three because under the two-part standard enunciated in Slack v. McDaniel, 529 U.S. 473, 484-85 (2000), "jurists of reason," would not find it debatable whether the Court is correct in its procedural ruling or whether Petitioner has stated a viable Constitutional claim. The Court further DECLINES to issue a certificate of appealability as to Petitioner's remaining grounds for relief, which the Magistrate Judge addressed on the merits, as Petitioner made no substantial showing that he stated a viable claim of the denial of a Constitutional right or that the issues presented are adequate to deserve encouragement to proceed further. Slack. 529 U.S. at 475.

Finally, with respect to any application by Petitioner to proceed on appeal in forma pauperis, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in good faith, and therefore the Court DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. P. 24(a), Kincade v. Sparkman, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

SO ORDERED.

DATED: January 5, 2012     /s/ S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge